

AMENDED IN SENATE AUGUST 27, 2003

AMENDED IN SENATE JULY 8, 2003

AMENDED IN SENATE JUNE 26, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 453

Introduced by Assembly Member Yee

February 14, 2003

An act to add Section 5110 to the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 453, as amended, Yee. Public works contracts: compensation of contractors.

Existing law sets forth the procedures governing the bidding, awarding, and payment of, public works contracts by public entities, and the relief due bidders and contractors under those contracts.

This bill would provide that when a project for the construction, alteration, repair, or improvement of any structure, building, or road, or other improvement of any kind is competitively bid and a protest is made, the contract may be entered into pending final decision on the protest. If the contract is later determined to be invalid due to a defect or defects in the competitive bidding process caused solely by the public entity, this bill would entitle the contractor who entered into the contract with the public entity to be paid the reasonable cost, specifically excluding profit, of the labor, equipment, materials, and services furnished by the contractor prior to the date of the determination, subject to specified conditions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. It is the intent of the Legislature in enacting this
2 act that a contractor subject to its provisions may be paid the
3 reasonable cost, specifically excluding profit, of labor, equipment,
4 materials, and services that were rendered under a contract that
5 was competitively bid, but subsequently determined to be invalid,
6 in order to avoid unjust enrichment of the public entity and an
7 unlawful taking of the contractor's property.

8 SEC. 2. Section 5110 is added to the Public Contract Code, to
9 read:

10 5110. (a) When a project for the construction, alteration,
11 repair, or improvement of any structure, building, or road, or other
12 improvement of any kind is competitively bid and a bid protest is
13 made, the contract may be entered into pending final decision of
14 the protest, subject to the requirements of this section. If the
15 contract is later determined to be invalid due to a defect or defects
16 in the competitive bidding process caused solely by the public
17 entity, the contractor who entered into the contract with the public
18 entity shall be entitled to be paid the reasonable cost, specifically
19 excluding profit, of the labor, equipment, materials, and services
20 furnished by the contractor prior to the date of the determination
21 that the contract is invalid if all of the following conditions are met:

22 (1) The contractor proceeded with construction, alteration,
23 repair, or improvement based upon a good faith belief that the
24 contract was valid.

25 (2) The public entity has reasonably determined that the work
26 performed is satisfactory.

27 (3) Contractor fraud did not occur in the obtaining or
28 performance of the contract.

29 (4) The contract does not otherwise violate statutory or
30 constitutional limitations.

31 (b) In no event shall payment to the contractor pursuant to this
32 section exceed either of the following:

33 (1) The contractor's costs as included in its bid plus the cost of
34 any approved change orders.



1 (2) The amount of the contract less profit at the point in time
2 the contract is determined to be invalid.
3 (c) Notwithstanding subdivision (a), this section shall not
4 affect any protest and legal proceedings, whether contractual,
5 administrative, or judicial, to challenge the award of the public
6 works contract and enforce competitive bidding laws, *nor affect*
7 *any rights under Section 337.1 or 337.15 of the Code of Civil*
8 *Procedure.*

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